IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL NO.1409/1996

Om Prakash Sharma
Vs.
The State of Rajasthan & Anr.

DATE OF JUDGMENT :: 03-04-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Sandeep Saxena for the appellant.
Shri B.L. Awasthi, Addl.G.A. on behalf of
Shri Bharat Vyas AAG for the State.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):-

This appeal is directed against the order of the learned Single Judge dated 20.8.1996 in S.B. Civil Writ Petition no.3519/1995 dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction in effect and substance for his promotion on the post of Drug Inspector (Ayurved) and other ancillary reliefs.

Facts of the case, briefly stated, are that the appellant was appointed as Ayurved Chikitsak on 11.5.1964. He was promoted as Vaidya Grade I on 27.3.1973 and confirmed on the post on 22.5.1976. On

30.10.1976 he was appointed as Drug Inspector (Ayurved). The case of the appellant is that the appointment was made pursuant to selection on recommendation of the Selection Committee. He started holding additional charge of the post of Assistant Drug Controller from 20.4.1981. While holding the post of Drug Inspector (Ayurved) with additional charge of the post of Assistant Drug Controller, on 2.6.1995 he was promoted to the post of District Ayurved Officer against vacancies of the year 1992-93. On 15.6.1995 the appellant submitted application foregoing the said promotion on the post of District Ayurved Officer. However he was relieved from the post of Drug Inspector (Ayurved) in the light of the above-said order of promotion on 15.6.1995. The appellant filed the writ petition challenging the said orders in this Court. By an interim order dated 11.8.1995 he was allowed to continue on the post of Drug Inspector (Ayurved) with additional charge of the post of Assistant Drug Controller. The writ petition was ultimately dismissed by the impugned order on 20.8.1996. The learned Single Judge held that he had failed to established any legal right to hold the post of Drug Inspector (Ayurved). In response to the alternative submission which appears to have been made on behalf of the appellant that if his claim for the post of Drug Inspector is not accepted, he may be allowed to join as District Ayurved Officer, the

learned Single Judge observed that he may move the appropriate authority. In the light of the said order, on 26.9.1996 the appellant submitted application withdrawing his above-said application dated 15.6.1995 foregoing promotion on the post of District Ayurved Officer with request to allow him to join as District Ayurved Officer in pursuance of the promotion order dated 2.6.1995. Curiously, he also filed application for stay in this appeal. By order dated 16.1.1997, operation of the order of the learned Single Judge dated 20.8.1996 was stayed till further orders. The case of the appellant is that no action was taken on his above-said application dated 26.9.1996 until 25.9.1997 when by a fresh order he was promoted to the post of District Ayurved Officer against the vacancies of the year 1996-97 and allowed to join the post. The appellant retired from service on reaching the age of superannuation on the post of District Ayurved Officer on 31.7.2001.

Shri Sandeep Saxena, counsel for the appellant made a vain attempt to buttress the appellant's claim for the post of Drug Inspector (Ayurved). However considering that the post of Drug Inspector did not fall in the channel of promotion as per rules then in vogue it is plain that he had no right to claim the post of Drug Inspector. It is relevant to mention here that he was granted promotion on the post of District Ayurved Officer in

the light of his request vide letter dated 15.4.1995 that he may be granted promotion in the regular cadre and accordingly DPC considered his case and as per his seniority he was promoted to the post of District Ayurved Officer. We do not find any error in the findings of the learned Single Judge in this regard.

Counsel then submitted that the appellant vide letter dated 26.9.1996 withdrew the 'forego' application dated 15.6.1995 and a direction may be issued for his promotion against the vacancies of the year 1992-93. It is not possible to accede to the request. The appellant had been duly promoted to the post of District Ayurved Officer and if he declined promotion on his own volition, he has to thank himself. He can not turn around later and claim promotion from 1992-93. It is relevant to mention here that on his request to 'forego' promotion was accepted and order to this effect was passed on 14.11.1995. The appellant can not complain of any hardship if he lost his promotion from 1992-93 which was of his own making. It may be recalled that pursuant to the interim order of this Court he continued to hold the post of Drug Inspector with additional charge of Assistant Drug Controller and he thus enjoyed the benefits of the post. But for that order, he would have been posted as Ayurvedic Chikitsak in the light of order dated 14.11.1995 (Supra).

Counsel made a passing reference to the fact that the appellant was denied the benefit of grade increments on the post of Drug Inspector. There is no substance in this grievance. It is to be kept in mind that he continued to hold the post of Drug Inspector pursuant to interim order of this Court. In view of the findings of the learned Single Judge that the appellant not entitled to the post of Drug Inspector with which we agree, it is not possible to issue any direction to grant grade increments on the post of Drug Inspector. The appellant was eventually promoted to the post of District Ayurved Officer against the vacancies of the year 1996-97 and he has no option but to remain content with the same.

Counsel however made another grievance to the effect that the appellant was also denied release of grade increments and benefit of revision of pay on the post of District Ayurved Officer. We find this grievance to be well founded. The promotion of the appellant against the vacancies for the year 1996-97 vide order dated 25.9.1997 being substantive and in accordance with rules, there was no justification to withhold increments and the benefit of pay revision. However this appears to be on account of pendency of the writ petition and this appeal. As seen above, the appellant had obtained stay of the judgment of the learned Single Judge and the authorities perhaps

thought that till final resolution of the dispute revolving around the appellant's claim for the post of Drug Inspector, release of grade increment and/or pay revision on the post of District Ayurved Officer, may be kept on hold.

Be that as it may, as indicated above, the appellant having received benefits of the post of Drug Inspector and ultimately promoted to the post of District Ayurved Officer in his own cadre the appropriate course would be to direct the respondents to notionally fix pay of the appellant on the post of Vaidya Grade I, which is the feeder post, during intervening period till the date of his promotion to the post of District Ayurved Officer, and then fix the pay on the post of District Ayurved Officer with effect from 25.9.1997, extend him the benefits of grade increments and pay revision, and accordingly fix his pension and other retiral dues. The exercise should be completed within three months from the date of receipt of a copy of this order.

The appeal is disposed of in the above terms.

[MOHAMMAD RAFIQ], J. [S.N. JHA], CJ.

Skant/-